

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON HOWARD, individually and on	:	
behalf of all others similarly situated,	:	
	:	Case No. 08-cv-02804 (RWS)
Plaintiff,	:	
	:	
v.	:	
	:	
THE BEAR STEARNS COMPANIES, INC.,	:	
THE BEAR STEARNS COMPANIES, INC.	:	
EXECUTIVE COMMITTEE, JAMES E.	:	
CAYNE, ALAN D. SCHWARTZ, WARREN	:	
J. SPECTOR, SAMUEL L. MOLINARO, JR.,	:	
ALAN C. GREENBERG, and JOHN DOES 1-	:	
10,	:	
	:	
Defendants.	:	
	:	

[additional captions on following pages]

**PLAINTIFF SCOTT WETTERSTEN'S MEMORANDUM IN SUPPORT OF MOTION
BY PLAINTIFFS AARON HOWARD AND SHELDEN GREENBERG TO:
CONSOLIDATE ERISA ACTIONS; APPOINT INTERIM LEAD PLAINTIFFS,
INTERIM CO-LEAD CLASS COUNSEL AND INTERIM LIAISON COUNSEL; AND
FOR ENTRY OF PRETRIAL ORDER NO. 1**

ESTELLE WEBER, individually, on behalf of
the Bear Stearns Companies Inc. Employee
Stock Ownership Plan, and all others similarly
situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
CUSTODIAL TRUST COMPANY, JAMES
CAYNE, ALAN SCHWARTZ, WARREN
SPECTOR, SAMUEL MOLINARO, ALAN
GREENBERG, and JOHN DOES 1-20,

Defendants.

Case No. 08-cv-02870 (RWS)

ANTHONY PISANO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-cv-03006 (UA)

HANS MENOS, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-cv-03035 (RWS)

IRA GERWITZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-cv-03089 (RWS)

DREW V. LOUNSBURY, Individually and On :
 Behalf of All Others Similarly Situated, :

Plaintiff, :

v. :

THE BEAR STEARNS COMPANIES, INC.; :
 JAMES E. CAYNE, ALAN C. GREENBERG; :
 ALAN D. SCHWARTZ; PAUL A NOVELLY; :
 FRANK T. NICKELL; FREDERICK V. :
 SALERNO; VINCENT TESE; and JOHN :
 AND JANE DOES 1-10, :

Defendants. :

Case No. 08-cv-03326 (RWS)

SHELDEN GREENBERG, Individually and :
 On Behalf of All Others Similarly Situated, :

Plaintiff, :

v. :

THE BEAR STEARNS COMPANIES, INC., :
 JAMES E. CAYNE, ALAN C. GREENBERG, :
 JEFFREY MAYER, SAMUEL L. :
 MOLINARO, JR., ALAN D. SCHWARTZ, :
 WARREN J. SPECTOR, and JOHN AND :
 JANE DOES 1-10, :

Defendants. :

Case No. 08-cv-03334 (RWS)

SCOTT WETTERSTEN Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-cv-03351 (RWS)

RITA RUSIN, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-cv-03441 (UA)

Plaintiff Scott Wettersten (“Wettersten”), by his undersigned counsel, respectfully submits this Memorandum in support of the Motion by Plaintiffs Aaron Howard and Shelden Greenberg to: Consolidate ERISA Actions; Appoint Interim Lead Plaintiffs, Interim Co-Lead Class Counsel and Interim Liaison Counsel; and for Entry of Pretrial Order No. 1 (the “*Howard Motion*”).

Plaintiffs in the above-captioned actions (the “ERISA Actions”)¹ each filed substantially similar complaints in this District alleging that The Bear Stearns Companies, Inc. (“Bear Stearns” or the “Company”) and certain Bear Stearns committees, senior officers and directors (collectively, “Defendants”) violated the Employee Retirement Income Security Act of 1974 (“ERISA”). Plaintiffs in three of the ERISA Actions filed competing motions for consolidation, appointment of Lead Plaintiffs, and appointment for Lead or Co-Lead Counsel.² Plaintiff Wettersten was prepared to file his own competing motion seeking consolidation, appointment as Lead Plaintiff, and his selection of counsel, Johnson & Perkinson (“J&P”), as Interim Lead Class Counsel pursuant to FED. R. CIV. P. 23(g)(3). As part of the preparation for this potential motion, J&P analyzed the competing motions, along with the memoranda, declarations, and exhibits filed in support thereof.

In the spirit of compromise, to reduce litigation time and costs, and to reduce the burden on the Court, J&P contacted the *Howard* Plaintiffs’ selection of Lead Counsel, Schiffrin Barroway Topaz & Kessler, LLP (“SBTK”) and Keller Rohrback L.L.P. (“Keller Rohrback”).

¹ The complaints filed, to date, in this District with substantially similar claims are as follows: *Howard v. Bear Stearns Cos., Inc., et al.*, No. 08-2804 (RWS); *Weber v. Bear Stearns Cos., Inc., et al.*, No. 08-2870 (RWS); *Pisano v. Bear Stearns Cos., Inc., et al.*, No. 08-3006 (UA); *Menos v. Bear Stearns Cos., Inc., et al.*, No. 08-3035 (RWS); *Gerwitz v. Bear Stearns Cos., Inc., et al.*, No. 08-3089 (RWS); *Lounsbury v. Bear Stearns Cos., Inc., et al.*, No. 08-3326 (RWS); *Greenberg v. Bear Stearns Cos., Inc., et al.*, No. 08-3334 (RWS); *Wettersten v. Bear Stearns Cos., Inc., et al.*, No. 08-3551 (RWS); and *Rusin v. Bear Stearns Cos., et al.*, No. 08-cv-03441 (UA).

² In addition to the *Howard Motion*, Plaintiff Drew Lounsbury filed a competing motion (the “*Lounsbury Motion*”) and Plaintiffs Estelle Weber, Anthony Pisano, and Ira Gerwitz (the “*Weber Plaintiffs*”) filed a competing motion (the “*Weber Motion*”).

Through the course of several communications with SBTk and Keller Rohrback, and after careful consideration, Plaintiff Wettersten determined that his individual interests, and the interests of the putative class, would be best served in these ERISA Actions if the Court grants the relief sought in the *Howard* Motion by entry of the proposed Pretrial Order No. 1, attached thereto. Plaintiff Wettersten based this determination on several factors, including the qualifications of SBTk and Keller Rohrback, which speak for themselves, and an agreement between SBTk/Keller Rohrback and J&P that will facilitate J&P's involvement in each stage of the litigation so as to guarantee protection of J&P's client's interests and to allow J&P to help protect the interest of the putative class.

J&P is a litigation boutique that has been litigating class claims involving allegations of fraud and corporate misrepresentation for over 25 years.³ *See In re: Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1260 (D. Kan. 2006). Thus, while SBTk and Keller Rohrback ably satisfy the provisions of Rule 23(g)(1)(C) of the Federal Rules of Civil Procedure, and are "best able to represent the interests of class," *see* Fed. R. Civ. P. 23(g)(2), contribution by J&P can only inure to the further benefit of the putative.

As such, Plaintiff Wettersten respectfully requests that this Court enter the proposed Pretrial Order No. 1 submitted by the *Howard* Plaintiffs, which seeks consolidation of the

³ Dennis J. Johnson, Esq., senior partner at J&P, began his career in 1980, serving as an attorney in the Enforcement Division of SEC. In 1985, Mr. Johnson initiated a securities class action practice at a firm in Philadelphia. Since 1989, Mr. Johnson has been pursuing complex class action claims on behalf of consumers, shareholders, and, more recently, 401(k) plan participants in his own firm. In 1994, Mr. Johnson formed The Law Offices of Dennis J. Johnson, which became J&P on January 1, 2001. J&P recently served as one of three co-lead counsel to the participants in Sprint Corporation 401(k) plans in *In re Sprint Corp. ERISA Litig.*, Civ. No. 03-2202-JWL, (D. Kan.), in which Chief Judge John W. Lungstrum commended J&P and its co-lead counsel at the conclusion of the litigation, stating, "In sum, counsel litigated this case during its early phases aggressively and in a manner that demonstrated legal expertise in this area of the law. Then, once the opportunity for settlement came about, plaintiffs' counsel pushed for creative settlement possibilities that worked to maximize the settlement value for the class as a whole as well as for the various categories of class members." *In re: Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1260 (D. Kan. 2006). Additionally, J&P is one of three co-lead counsel in *Carlson v. Xerox Corp., et al.*, Civ. No. 00-1621(AWT) (D. Conn.), a securities class action that recently settled for \$750 million.

ERISA Actions, appointment of the *Howard* Plaintiffs as Lead Plaintiffs, and appointment of SBTk and Keller Rohrbach as Co-Lead Counsel for the putative class.

DATED: April 18, 2008

SHALOV STONE BONNER & ROCCO LLP

By: /s/ Thomas G. Ciarlone, Jr.

Ralph M. Stone
(rstone@lawssb.com)

James P. Bonner
(jbonner@lawssb.com)

Thomas G. Ciarlone, Jr.
(tciarlone@lawssb.com)

485 Seventh Avenue, Suite 1000
New York, NY 10018
Tel: (212) 239-4340
Fax: (212) 239-4310

JOHNSON & PERKINSON

Dennis J. Johnson
Jacob B. Perkinson
James F. Conway, III
Eben F. Duval
1690 Williston Road
P.O. Box 2305
South Burlington, VT 05043
Tel: (802) 862-0030
Fax: (802) 862-0060

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON HOWARD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
THE BEAR STEARNS COMPANIES, INC.
EXECUTIVE COMMITTEE, JAMES E.
CAYNE, ALAN D. SCHWARTZ, WARREN
J. SPECTOR, SAMUEL L. MOLINARO, JR.,
ALAN C. GREENBERG, and JOHN DOES 1-
10,

Defendants.

Case No. 08-cv-02804 (RWS)

[additional captions on following pages]

CERTIFICATE OF SERVICE

ESTELLE WEBER, individually, on behalf of
the Bear Stearns Companies Inc. Employee
Stock Ownership Plan, and all others similarly
situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
CUSTODIAL TRUST COMPANY, JAMES
CAYNE, ALAN SCHWARTZ, WARREN
SPECTOR, SAMUEL MOLINARO, ALAN
GREENBERG, and JOHN DOES 1-20,

Defendants.

Case No. 08-cv-02870 (RWS)

ANTHONY PISANO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-cv-03006 (UA)

HANS MENOS, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-cv-03035 (RWS)

IRA GERWITZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-cv-03089 (RWS)

DREW V. LOUNSBURY, Individually and On :
Behalf of All Others Similarly Situated, :

Plaintiff, :

v. :

THE BEAR STEARNS COMPANIES, INC.; :
JAMES E. CAYNE, ALAN C. GREENBERG; :
ALAN D. SCHWARTZ; PAUL A NOVELLY; :
FRANK T. NICKELL; FREDERICK V. :
SALERNO; VINCENT TESE; and JOHN :
AND JANE DOES 1-10, :

Defendants. :

Case No. 08-cv-03326 (RWS)

SHELDEN GREENBERG, Individually and :
On Behalf of All Others Similarly Situated, :

Plaintiff, :

v. :

THE BEAR STEARNS COMPANIES, INC., :
JAMES E. CAYNE, ALAN C. GREENBERG, :
JEFFREY MAYER, SAMUEL L. :
MOLINARO, JR., ALAN D. SCHWARTZ, :
WARREN J. SPECTOR, and JOHN AND :
JANE DOES 1-10, :

Defendants. :

Case No. 08-cv-03334 (RWS)

SCOTT WETTERSTEN Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-cv-03351 (RWS)

RITA RUSIN, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,
JAMES E. CAYNE, ALAN D. SCHWARTZ,
WARREN J. SPECTOR, SAMUEL L.
MOLINARO, JR., ALAN C. GREENBERG,
and JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-cv-03441 (UA)

I, James F. Conway, III, hereby certify that on April 18, 2008, I caused to be served, on counsel listed below, true and correct copies of Plaintiff Scott Wettersten's Memorandum in Support of the Motion by Plaintiffs Aaron Howard and Shelden Greenberg to: Consolidate ERISA Actions; Appoint Interim Lead Plaintiffs, Interim Co-Lead Class Counsel and Interim Liaison Counsel; and for Entry of Pretrial Order No. 1, via first-class mail, postage pre-paid:

Robert Andrew Skirnick, Esq.
Meredith Cohen Greenfogel & Skirnick, P.C.
One Liberty Plaza, 35th Fl.
New York, NY 10006

Edwin J. Mills, Esq.
Stull Stull & Brody
6 E. 45th St., 5th Fl.
New York, NY 10017

Brad Scott Karp, Esq.
Douglas M. Pravda
Lewis Richard Clayton, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Steve W. Berman, Esq.
Hagen Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suit 2900
Seattle, Washington 98101

Joseph H. Meltzer, Esq.
Edward W. Ciolko, Esq.
Schiffirin Barroway Topaz & Kessler, LLP
280 King of Prussia Road
Radnor, PA 19087

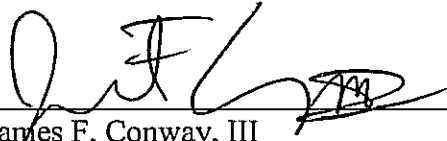
Milo Silberstein, Esq.
Dealy & Silberstein, LLP
225 Broadway, Ste. #1405
New York, NY 10007

Marian P. Rosner, Esq.
Wolf Popper LLP
845 Third Avenue
New York, NY 10022

I. Stephen Rabin, Esq.
Rabin & Peckel LLP
275 Madison Avenue, Suite 420
New York, NY 10016

Lynn L. Sarko
Keller Rohrback L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052

Dated: April 18, 2008.

A handwritten signature in black ink, appearing to read 'J.F. Conway, III', is written over a horizontal line.

James F. Conway, III
JOHNSON & PERKINSON
1690 Williston Road
P.O. Box 2305
South Burlington, VT 05403
Tel: (802) 862-0030
Fax: (802) 862-0060